LABOR LAW - UNION DISCIPLINE - MEMBERS WHO VIOLATE UNION BY-LAWS BY CROSSING LAWFUL PICKET LINES ARE SUBJECT TO COURT-ENFORCED FINES. N.L.R.B. v. Allis-Chalmers Mfg. Co., 87 Sup.Ct. 2001 (1967).

In compliance with the union constitution, lawful strikes were called against Allis-Chalmers by two locals of the U.A.W. During the strikes, members of each local crossed and worked behind the picket line. After the strikes these employees were charged with "conduct unbecoming a union member"; and, after an adversary proceeding conducted by the local's trial committee were found guilty and fined sums ranging from $20 to $100.[1] Some of the members paid the fine while others refused. The union sued to collect the fines in state court and recovered judgment upon the contract theory that the employee by joining the union assumed the duties of membership as outlined in the union constitution.

Allis-Chalmers filed unfair labor practice charges against the locals alleging violation of Section 8(b)(1)(A) of the Labor Management Relations Act[2] in that the levying of court-enforced fines "restrained and coerced" the employees in their exercise of the statutory right to engage in or refrain from concerted activities as protected by Section 7 of the Act.[3]

The N.L.R.B. viewed the case[4] as a conflict between Section 8(b)(1)(A) which protects EMPLOYEES in the exercise of their statutory rights, and its proviso[5] which defines plenary union

1. The International Union's Constitution and by-laws permitted levying these fines for each day's violation. Local 248, United Automobile, Aerospace, Etc., 149 N.L.R.B. 67, 68, 57 L.R.R.M. 1242 (1964).
2. Section 8(b). "It shall be an unfair labor practice for a labor organization or its agents - (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . . ." Labor Management Relations Act (Taft-Hartley Act) §8(b)(1)(A), 61 Stat. 140 (1947), 29 U.S.C. §158(b)(1)(A) (1952).
3. Section 7: "Employees shall have the right to . . . engage in . . . concerted activities . . . and shall also have the right to refrain from any or all such activities . . . ." Labor Management Relations Act (Taft-Hartley Act) §7, 61 Stat. 140 (1947), 29 U.S.C. Section 157 (1952).
4. Local 248, United Automobile, Aerospace, Etc., 149 N.L.R.B. 67, 57 L.R.R.M. 1242 (1964).
5. Supra, note 2.

power over UNION MEMBERS. The majority saw the union's action in fining the disobedient members as a legitimate exercise of power over its internal affairs, and thus falling within the protection of the proviso.[6] They reasoned that Section 7 rights could be and were waived by the employee's voluntary act of joining the union.[7] Such act changed his status from that of an employee enjoying the right to refrain from concerted activities, to that of a union member subject to union authority. The dissent, on the other hand, viewed fining as falling outside the proviso, thereby receiving the protection of Section 8(b)(1)(A).

The Seventh Circuit Court of Appeals[8] reversed the Board holding that although the union had the statutory right to expel dissident members, the use of any other means of discipline, such as fining, amounted to coercion in violation of Section 8(b)(1)(A).[9] The employee, the court said, does not waive his

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6. The Board quoted cases holding that §8(b)(1)(A) does not prohibit union disciplinary sanctions that are neither tinged with violence nor directed at employment status, the later being a violation of §8(b)(2). See Minneapolis Star and Tribune Company, 109 N.L.R.B. 727, 738, 34 L.R.R.M. 1431 (1954); International Typographical Union, 86 N.L.R.B. 951, 956-957, 1022-1023, 25 L.R.R.M. 1052 (1949); Local 283, United Automobile, Aircraft, Etc., 145 N.L.R.B. 1097, 55 L.R.R.M. 1085 (1964); United Steel Workers of America, Local No. 4028, 154 N.L.R.B. 692, 60 L.R.R.M. 1008 (1965); N.L.R.B. v. International Union, United A., A. & A. I. Wkrs., 320 F.2d 12 (1st Cir. 1963); Machinists v. Gonzales, 356 U.S. 617, 620 (1958).

7. "Neither §7 nor any other provision . . . grants assurance that the employee thus choosing to refrain shall be relieved of duties and obligations undertaken as a consequence of his acquisition or retention of membership in a labor organization." Local 248, United Automobile, Aerospace, Etc., 149 N.L.R.B. 67, 57 L.R.R.M. 1242, 1244 (1964). Accord, N.L.R.B. v. International Union, United A., A. & A. I. Wkrs., 320 F.2d 12 (1st Cir. 1963).

8. Allis-Chalmers Mfg. Co. v. N.L.R.B., 358 F.2d 656 (7th Cir. 1966).

9. Cf. With respect to union fines imposed upon employees who refrained from a strike: "But to equate union fines with total wages earned by a non-striking employee is the grossest form of economic coercion affecting not only union membership status but also the relationship between the employee and his employer in violation of the Act. [8(b)(2)]. Such economic coercion is calculated in design and effect to force an employee to act in concert with the union in future labor-management strife. Congress has imposed strict limitation on compulsory unionism, and the Supreme Court has determined the obligation of union membership to be confined solely to the payment of dues." Leeds & Northrup Co. v. N.L.R.B., 357 F.2d 527, 536 (3d Cir. 1966).

statutory Section 7 rights when he becomes a member of the union.

Before this case the law was unclear with respect to the power of unions to levy fines upon its members. If the union attempted to prevent defecting members from crossing picket lines by threatening them with "physical" harm or if it interfered with their employment relationship the union violated Section 8(b)(1)(A).[10] There was, however, no prohibition on the union's right to expel a dissident member[11] and the unions have long argued that the lesser sanction of fining was necessary to insure majority rule.[12] But there has been long standing opposition to this argument.[13]

10. E.g. Progressive Mine Workers v. N.L.R.B., 187 F.2d 298 (7th Cir. 1951); N.L.R.B. v. Bell Aircraft Corp., 206 F.2d 235 (2d Cir. 1953); Fox Midwest Amusement Corp., 98 N.L.R.B. 699, 717-719, 29 L.R.R.M. 1414 (1952); Minneapolis Star and Tribune Co., 109 N.L.R.B. 727, 34 L.R.R.M. 1431 (1954). Many sources today argue the inclusion of "economic violence" under the definition of physical violence since the effect is often the same. Leeds & Northrup Co. v. N.L.R.B., 357 F.2d 527 (3d Cir. 1966).

11. There was authority for the proposition that when a union decided not to strike or entered into a no-strike agreement a dissident minority was not free by virtue of its §7 rights to ignore that decision and strike on its own. See e.g., N.L.R.B. v. Draper Corp., 145 F.2d 199 (4th Cir. 1944); Parks v. I.B.E.W., 314 F.2d 886 (4th Cir. 1963), cert. denied, 372 U.S. 976 (1963); N.L.R.B. v. Sands Mfg. Co., 306 U.S. 332 (1939); Labor Board v. Rockaway News Co., 345 U.S. 71 (1953). Likewise, unions argued in the instant case, if a union decides to strike, members may not refuse. Contra, Mastro Plastics Corp. v. N.L.R.B., 350 U.S. 270, 280 (1956).

12. The argument usually runs that Congress, which permitted the Union to expel members, certainly would not prohibit the sanction of fining which has less severe effects. See, e.g., N.L.R.B. v. Amalgamated Local 286, 222 F.2d 95 (7th Cir. 1955); Rubens v. Weber, 260 N.Y.S. 701, 237 App. Div. 15 (1932); Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 612, 622-633 (1958-59); Summers, Disciplinary Procedures of Unions, 4 Ind. & Lab. Rel. Rev. 15, 26 (1950-51); Summers, Legal Limitations on Union Discipline, 64 Harv. L. Rev. 1049 (1950-51).

13. Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 830 (1960), . . . "Preserving democracy requires protecting individual and minorities against numerical majorities or an officialdom which acts with the majority's consent. It is not enough to put our trust in self-restraint." See, §8(b)(1)(A) Limitations Upon the Right of a Union to Fine Its Members, 115 U. of Penn. L. Rev. 47, 61-63 (1966).

Proceeding on petition for review of an order of the N.L.R.B.'s dismissal and the court's reversal, the Supreme Court granted certiorari. In June, 1967, the Supreme Court held[14] that a union which fines its members for crossing its lawful picket line and attempts to collect such fines by suit or threat of suit in a state court does not commit an unfair labor practice in violation of Section 8(b)(1)(A). Such fining does not "restrain or coerce" employees in violation of Section 8(b)(1)(A)--because the employee waived his statutory Section 7 rights when he voluntarily became a union member. There was a vigorous four judge dissent which felt that these rights were intended by Congress to be absolute and non-waivable.

The principal reason behind the court's decision was the assumption that the institution of "unionism" would be destroyed if minority members possess power to defy the majority in the crucial use of concerted activities, especially with regard to the weaker unions. Expulsion power was not sufficient because where the union is weak and membership therefore of little value, the union faced with further depletion has no real choice except to condone the members' disobedience. "It is just such weak unions for which the power to execute union decisions taken for the benefit of all employees is most critical to effective discharge of its statutory policy."[15]

The Supreme Court by upholding the right of the group to use the legal process to enforce its discipline over dissident members will clearly strengthen unionism, but it is submitted that the court is overlooking the rights and dignity of the now obscure member who is economically coerced into obeying union directives. By associating, which is often motivated by economic necessity, the individual may well be forced to surrender matters of conscience, belief or expression, or alternatively be subject to court-enforced union fines. The court viewed the union as a private government " ... with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom he [the bargaining representative] represents."[16] It may even bargain away his right to strike and his right to cross a lawful picket line.

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14. N.L.R.B. v. Allis-Chalmers Mfg. Co., 87 Sup. Ct. 2001 (1967).

15. The majority's assumption that unions would collapse without the availability of the fining sanction appears unsupported by empirical data or sound reasoning. The dissent, using the same history, reaches the opposite result with equal facility. N.L.R.B. v. Allis-Chalmers Mfg. Co., supra note 14, at 2008.

16. N.L.R.B. v. Allis-Chalmers Mfg. Co., 87 Sup. Ct. 2001, 2006 (1967), quoting Steele v. Louisville & N. R. Co., 323 U.S. 192, 202 (1944).

Thus the employee by joining a union loses many of those rights which he had before becoming affiliated. The court suggests the reason is because the majority rule concept is today unquestionably at the center of our federal labor policy.[17] This policy extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interest of all employees.

The court, narrowly construing Section 8(b)(1)(A), interpreted Congressional intent in using the "inherently imprecise words restrain or coerce" as excluding union members from its umbrella of protection. This permitted the union to discipline its members by fining, which was seen as a legitimate exercise of power over internal union affairs, as was granted in the proviso. In justifying the limited protection of Section 8(b)(1)(A) to only those in the employee status, the court characterizes the union-member relationship as one established by contract principles with employee rights being voluntarily "waived". Such notion widely prevails in this country with the courts' only role being to enforce the contract.[18]

The dissent, by Justice Black,[19] envisioned far reaching effects of this practice of fining which, if not checked, would permit the union to economically invade the personality of each member and substitute its will for the member's. He would broadly interpret Section 8(b)(1)(A) to protect union as well as non-union employees from coercive union tactics. This would leave workers free to determine whether or not to engage in concerted labor activities unhampered by pressures of employers or unions. The dissent goes on to say that Section 7 rights are absolute and not waived by an employee when he assumes the status of a union member.

The dissent recognized the impropriety and the threat to freedom presented by the court's approval of the government-like function over its members. Justice Black stated that "it is one thing to say that Congress did not wish to interfere with the union's power to prescribe conditions of membership but quite another thing to say that Congress intended to leave unions free to exercise a court-like power to try and punish

17. See Wellington, Union Democracy and Fair Representation: Federal Responsibility in a Federal System, 67 Yale L. J. 1327, 1333 (1957-58).
18. See Summers, The Law of Union Discipline: What the Courts Do in Fact, 70 Yale L. J. 175, 180 (1960-61).
19. Justice Black was joined by Justices Douglas, Harlan and Stewart.

members with a direct economic sanction for exercising this right to work."[20]

The majority opinion was supported by three justices, as was the dissent. The rule of law was "crystallized" when Justice White concurred and stated that coercive union rules are enforceable at least by expulsion, never commenting on the fines. He concluded that the majority opinion is the more persuasive and sensible construction of the statute, although he stated, "I am doubtful about the implications of some of its generalized statements."[21]

The implications of this case are indeed far reaching. Today institutions, such as unions, have displaced much of the government's functions in exercising control and sanctions over individuals. However, thus far they have failed to recognize that responsibility must follow power if there is to be a free society.[22] The power of the group over the individual must be restrained or tyranny of the majority will be a devastating reality. The Supreme Court jealously guards the rights embodied in the Bill of Rights, but this case suggests that those cherished civil rights protecting the human personality from governmental invasion are being sacrificed on the economic front. These same rights upon which are grounded the essentials of human dignity including freedom of choice and freedom from coercion are being contracted away to the institution which results in a not so subtle form of economic servitude.

To protect these rights the court must recognize that 19th century contract principles are no longer an effective means of protecting individual liberties. Only by ascribing non-waivable rights and duties to an individual's status can the individual be protected from coercion resulting from contracts of adhesion. This would place a cloak of protection about the individual which no superior bargaining force could penetrate nor cause to be contracted away.

Sometimes because of a value judgment a man may hold moral or pragmatic considerations higher than his group membership. If he has chosen to be in the employee status -- even though he faces union expulsion -- the Section 7 rights ascribed to that status should be protected by Section 8(b)(1)(A). When faced with possible expulsion the employee can then choose whether he

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20. N.L.R.B. v. Allis-Chalmers Mfg. Co., 87 Sup. Ct. 2001, 2018 (1967).
21. Id. at 2016.
22. See generally, Affeldt, The Independent Labor Union and the Good Life, 35 George Washington L. Rev. 869, 906 (1967); Affeldt, The Right of Association and Labor Law, 7 Villanova L. Rev. 27 (1961).

values his union membership more than he values his right to work. But when faced with enforceable threats of financial sanctions far greater than his total earnings, if he exercise his right to work, all reasonable freedom of choice is foreclosed and the employee is compelled to bend to the union dictates.

The court had at its disposal the means to protect ALL workers, employees and union members, by broadly interpreting Section 8(b)(1)(A). By failing to do so they have severely limited the individual's right to dissent and his freedom of choice.

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